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APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY FOR §
AUTHORITY TO CHANGE RATES §

PUBLIC UTILITY COMMISSION
~~BEFORE THE~~
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**SOUTHWESTERN ELECTRIC POWER COMPANY'S THIRD APPEAL
OF MUNICIPAL DECISIONS**

On October 14, 2020, Southwestern Electric Power Company (SWEPCO) filed a Petition and Statement of Intent to Change Rates (Petition) within the areas over which the Commission has original jurisdiction. That Petition was assigned PUC Docket No. 51415. SWEPCO concurrently filed a Petition with each incorporated city having original jurisdiction over its retail rates.

I. Appeal of Municipal Decisions

SWEPCO appeals the rate decisions of those cities that have retained original jurisdiction over its rates, operations, and services and that have failed to timely act on SWEPCO's rate request. In its rate request filed with these cities, SWEPCO indicated that the effective date of its rate request was 35 days after the filing of the Petition and requested such date be extended by the cities to the maximum extent allowed by § 36.108(a)(1) of the Public Utility Regulatory Act¹ (PURA) — 90 days from the date the requested rate would otherwise become effective. While a number of cities granted this requested suspension, many cities failed to act and through that inaction, effectively denied the requested suspension and approved the requested rate relief.² This appeal of these cities' failure to act is necessary to preserve coordinated system-wide rates

¹ PURA is codified at Tex. Util. Code Ann. §§ 11.001–66.016.

² PURA § 36.108(c).

throughout SWEPCO's retail service territory. The Commission and Texas courts have recognized the value of providing and maintaining system-wide rates.³

This appeal is filed pursuant to PURA § 33.051, which allows a party to a municipal proceeding, such as SWEPCO, to appeal to the Commission a "decision" of the municipal governing body. A decision to not act on a rate request may be appealed to the Commission. Otherwise, the Commission is robbed of its exclusive appellate jurisdiction granted by PURA § 32.001(b). Further, appeal upon a city's failure or refusal to act on an application within a specified period is necessary to preserve parties' appellate rights.⁴

The municipalities that have failed to act by denying SWEPCO's request or timely suspending rates include: Atlanta, Big Sandy, Carthage, Center, Childress, Clarksville City, DeKalb, East Mountain, Estelline, Fruitvale, Gilmer, Grand Saline, Hallsville, Hawkins, Hooks, Hughes Springs, Jefferson, Kilgore, Lakeport, Leary, Linden, Marshall, Memphis, Miller's Cove, Mineola, Mt. Pleasant, Naples, Nash, New Boston, Omaha, Overton, Pittsburg, Queen City, Red Lick, Scottsville, Tenaha, Texarkana, Wake Village, Warren City, Waskom, Wellington, White Oak, Winfield, Winnsboro, and Winona.

³ *City of Allen v. Public Util. Comm'n*, 161 S.W.3d 195, 207 (Tex. App.—Austin 2005, no pet.) (noting, "the contemporary reality that the assets of an integrated utility simultaneously serve all its customers rendering the allocation of cost on a territorial basis an inappropriate method of rate-setting in the context of present-day technology") (quoting *City of Corpus Christi v. Public Util. Comm'n*, 572 S.W.2d 290, 296 (Tex. 1978)); see also *Rulemaking Related to Periodic Rate Adjustments*, Project No. 39465, Order at 53 (September 27, 2011) ("The commission agrees with Electric Utilities and REP Coalition that the rule should make an electric utility's appeal automatic; doing so avoids the cost of actually appealing the city action or inaction and ensures that the appeal is made. Because an appeal is necessary to ensure a system-wide DCRF, making the appeal automatic helps ensure a system-wide DCRF."), Tex. Util. Code § 33.055(a) (An interim rate order may be issued "to effect uniform system-wide rates"); *Application of Lower Colorado River Auth.*, 12 Tex. P.U.C. Bull. 1856 (Tex. P.U.C. May 13, 1987) (Uniform rates must be applied system-wide and not be based upon the locality of the utility's service area at which a customer is served).

⁴ *Cf. City of Sherman v. Railroad Comm'n of Tex.*, 454 S.W.2d 762, 764 (Tex. Civ. App.—Austin 1970, no writ) (An appeal may be taken upon rejection by the municipal government of an application for a rate increase or its failure or refusal to act on the application within a specified period "The doctrine of primary jurisdiction assures the agency, such as the Railroad Commission in this case, that it will not be bypassed on matters committed to it by law.").

II. Jurisdiction

The Commission has jurisdiction over this appeal under PURA §§ 32.001(b) and 33.051.

III. Motion of Consolidate

SWEPCO requests that its Third Appeal of the above municipalities' failure to act be consolidated with PUC Docket No. 51415. This appeal involves issues of law and fact common to those involved in PUC Docket No. 51415, and a separate hearing of this appeal and PUC Docket No. 51415 would result in unwarranted expenses, delay, or substantial injustice.

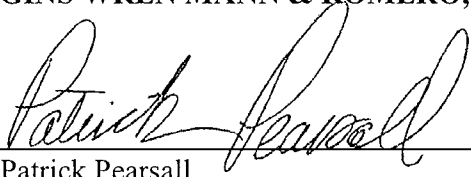
IV. Conclusion

SWEPCO respectfully requests the Administrative Law Judges enter an order consolidating this Third Appeal with PUC Docket No. 51415. SWEPCO further respectfully requests that upon final hearing, SWEPCO be granted the rate relief as requested in its Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 17, 2020, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter. In addition, a copy of the foregoing has been served by first-class U.S. mail upon the following:


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**APPLICATION OF SOUTHWESTERN § BEFORE THE
ELECTRIC POWER COMPANY FOR § PUBLIC UTILITY COMMISSION
AUTHORITY TO CHANGE RATES § OF TEXAS**

**LIST OF CITIES IN WHICH
SERVICE IS PROVIDED AND THE STATUS OF THEIR JURISDICTION**

Alba	Marshall
Atlanta	Maud
Avery	McLeod
* Beckville	Memphis
Bettie	Miller's Cove
Big Sandy	Mineola
Bloomburg	Mt. Enterprise
Carthage	Mt. Pleasant
Cason	Mt. Vernon
Center	Naples
Childress	Nash
* Clarendon	New Boston
Clarksville City	New London
Cookville	Omaha
Daingerfield	Overton
DeKalb	Pickton
* Dodson	Pittsburg
East Mountain	Price
Estelline	Pritchett
Fruitvale	Queen City
* Gary	Rolling Meadows
Gilmer	Redlick
Gladewater	Saltillo
Golden	Scottsville
Grand Saline	* Shamrock
Hallsville	Springhill
Hawkins	* Tatum
* Hedley	Tenaha
* Henderson	Texarkana
Hooks	Turnertown
Hughes Springs	* Union Grove
Jefferson	Wake Village
Joinerville	Wamba
Kilgore	Warren City
Lakeport	Waskom
* Lakeview	Wellington
Leary	White Oak
* Liberty City	Winfield
Linden	Winsboro
Longview	Winona

*Ceded Jurisdiction